

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2958 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRAKASHBHAI SURENDRABHAI VYAS

Versus

STATE OF GUJARAT

Appearance:

MR PRAKASH THAKKAR with MR HR PRAJAPATI for Petitioner
MR DP JOSHI AGP for Respondent No. 1 to 3
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 04/08/2000

ORAL JUDGEMENT

#. The detainee has filed this petition under Article 226 of the Constitution of India, challenging the order of detention made under sub-section (2) of section 3 of the Prevention of Blackmarketing & Maintenance of Supplies of

Essential Commodities Act, 1980 (hereinafter referred to as "the Act"), by respondent no. 2 - District Magistrate, Vadodara on 1.10.1999.

#. In the grounds of detention, it is alleged that the detenue is engaged in essential commodities namely petrol. In the month of August, 1999, samples of petrol collected from both the tanks, were forwarded for opinion to the laboratory. It was found that the petrol in tank no.2 was not according to the standards. There was much variance in the sample of petrol obtained. Instead of minimum 87% of octane in the sample, it was 78.8%. On 24.8.99 again, there was a checking and samples were taken from both the tanks and it was found that the petrol in both the tanks was not of the standard in so far as octane is concerned. It was also found that there was some tampering with the meter reading the units. Mixing the solvent with the petrol and the tampering the meter was with a view to gain wrongfully. On the above grounds and other grounds, the order of detention was made by the District Magistrate, Baroda.

#. Mr. P.M. Thakkar, learned counsel appearing for the petitioner has raised several grounds. However, it is not necessary to examine all the grounds as the matter can be disposed of only on a short ground that the Central Government has not disposed of the representation within a reasonable period. On behalf of the Union of India, affidavit dated 28.4.2000 of one R.C. Dhankar, Under Secretary, Consumer Affairs, Ministry of Food & Consumer Affairs, New Delhi is produced on the record. Without paging, the affidavits are placed on the record. Even on behalf of the petitioner, affidavit-in-rejoinder is placed on the record along with two annexures without paging. The affidavit dated 13th June, 2000 is on the record without paging. After the filing of the affidavit-in-rejoinder, there is another affidavit dated 20th June, 2000 filed by Shri R.C. Dhankar, Under Secretary, Consumer Affairs, Ministry of Food & Consumer Affairs, New Delhi. From the record, it appears that the order of detention was made on 1.10.99. The detenue surrendered on 29.3.2000. A representation was made to the Central Government. Zerox copy of the receipt issued by the Speed Post Department on 6.4.2000 is annexed with the affidavit of Shri D.S. Vyas on behalf of the petitioner to show that the said letter was posted on 6.4.2000. Deputy Manager, Speed Post Business office, Ahmedabad by his letter dated 3.6.2000 informed the advocate for the petitioner that the Speed Post article was delivered on 7.4.2000 under proper receipt. Zerox copy of the letter is produced on record. Thus, it is

contended that the representation was received by the Central Government on 7.4.2000, but the same has been disposed off on 28th April, 2000. There is no explanation for delay. The Under Secretary has filed the affidavit dated 20th June, 2000 from which it appears that the concerned section received the same on 27.4.2000. It is further stated in the affidavit that the representation was diarised in the office of the Minister (CA & PD) on 19.4.2000. 21.4.2000, 22.4.2000 and 23.4.2000 were closed holidays. The said representation was received in the office of Secretary (CA) on 24.4.2000, in the office of Additional Secretary it was received on 25.4.2000, in the office of the Director (ECR & E), it was received on 26.4.2000 and the office of Under Secretary received the same on 27.4.2000. Decision on the representation was taken on 27th April, 2000. However, in the affidavit, there is no explanation about the delay caused. On the ground of delay and considering the representation, this Court has allowed petitions relying on the decision of the Apex Court in the case of Rajammal v. State of Tamil Nadu, reported AIR 1999 SC P. 684. In para 9 of the said judgment, it is held as under.

"The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

#. In view of no explanation placed on the record, the continued detention is required to be held as bad and the petition is required to be allowed.

#. The petition is accordingly allowed. The detenue is ordered to be released forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

pirzada/-